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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
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9 Justin Gabriel Lincoln,
10 Petitioner,
11 v.
12 Charles L. Ryan, et al.,
13 Respondents.
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No. CV-16-01117-PHX-DJH
ORDER

15 This matter is before the Court on Petitioner's Petition for Writ of Habeas Corpus
16 pursuant to 28 U.S.C. § 2254 (Doc. 1) and the Report and Recommendation ("R&R")
17 issued by United States Magistrate Judge Bridget S. Bade (Doc. 15). In July 2008,
18 Petitioner pleaded guilty in Maricopa County Superior Court to two counts of
19 kidnapping, class two felonies and dangerous crimes against children under Arizona law,
20 for restraining two children under age 15 during a robbery by putting them on the ground
21 and threatening them with a gun. (Doc. 15 at 1-2). Petitioner was sentenced to a total of
22 17 years in prison. (Doc. 15 at 2). In the single claim for relief raised in his habeas
23 petition, Petitioner contends he is "actually innocent as it pertains to sentencing [because
24 the State] failed to prove every element beyond a reasonable doubt necessary to activate
25 the sentencing enhancement Petitioner ple[aded] guilty to." (Doc. 15 at 4) (quoting
26 Petitioner's habeas petition).

27 After full consideration of the issues, Judge Bade concluded that Petitioner's
28 claims are time-barred because he failed to file the habeas petition within the one-year

1 statute of limitations period. (Doc. 15 at 10). Judge Bade determined that statutory
2 tolling based on post-conviction relief proceedings in state court did not apply because
3 Petitioner filed his second and third petitions for post-conviction relief after the statute of
4 limitations period had already expired. (Doc. 15 at 6). Petitioner's first post-conviction
5 relief petition was an "of-right" proceeding under Arizona law, which is the functional
6 equivalent of a direct appeal. (Doc. 15 at 5). The trial court denied Petitioner's of-right
7 petition on February 11, 2010. (*Id.*). Because Petitioner failed to file a timely petition for
8 review in the Arizona Court of Appeals, his convictions became final upon expiration of
9 the time for doing so, which was March 18, 2010. (Doc. 15 at 5-6). Judge Bade
10 therefore determined that the one-year limitations period started to run the next day and
11 expired on March 18, 2011. (Doc. 15 at 6). Consequently, the habeas petition, which
12 was not filed until April 18, 2016, was more than five years too late. Moreover,
13 Petitioner did not demonstrate he was entitled to equitable tolling or that an equitable
14 exception to the limitations period should apply. (Doc. 15 at 6-10). Accordingly, Judge
15 Bade recommends that the habeas petition be denied. (Doc. 15 at 10).

16 Judge Bade advised the parties that they had fourteen days to file objections and
17 that the failure to file timely objections "may result in the acceptance of the Report and
18 Recommendation by the District Court without further review." (Doc. 15 at 10-11)
19 (citing *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*)).
20 The parties have not filed objections and the time to do so has expired. Absent any
21 objections, the Court is not required to review the findings and recommendations in the
22 R&R. *See Thomas v. Arn*, 474 U.S. 140, 149 (1989) (The relevant provision of the
23 Federal Magistrates Act, 28 U.S.C. § 636(b)(1)(C), "does not on its face require any
24 review at all . . . of any issue that is not the subject of an objection."); *Reyna-Tapia*, 328
25 F.3d at 1121 (same); Fed.R.Civ.P. 72(b)(3) ("The district judge must determine de novo
26 any part of the magistrate judge's disposition that has been properly objected to.").

27 Nonetheless, the Court has reviewed the R&R and agrees with its findings and
28 recommendations. The Court will, therefore, accept the R&R and deny the habeas

1 petition. *See* 28 U.S.C. § 636(b)(1)(C) (“A judge of the court may accept, reject, or
2 modify, in whole or in part, the findings or recommendations made by the magistrate
3 judge.”); Fed.R.Civ.P. 72(b)(3) (same).

4 Accordingly,


5 **IT IS ORDERED** that Magistrate Judge Bade's R&R (Doc. 15) is **accepted** and
6 **adopted** as the order of this Court.

7 **IT IS FURTHER ORDERED** that the Petition for Writ of Habeas Corpus
8 pursuant to 28 U.S.C. § 2254 (Doc. 1) is **denied** and **dismissed with prejudice**.

9 **IT IS FURTHER ORDERED** that pursuant to Rule 11(a) of the Rules Governing
10 Section 2254 Cases, a Certificate of Appealability and leave to proceed *in forma pauperis*
11 on appeal are **denied** because dismissal of the Petition is justified by a plain procedural
12 bar and jurists of reason would not find the procedural ruling debatable.

13 **IT IS FURTHER ORDERED** that the Clerk of Court shall terminate this action
14 and enter judgment accordingly.

15 **Dated** this 16th day of March, 2017.

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18 Honorable Diane J. Humetewa
19 United States District Judge
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